IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 2ND DAY OF APRIL 1998

BEFORE

THE HON'BLE MR.JUSTICE H.N.NARAYAN

C.R.P.NO.3201/1997

Syed Ahmed Qadri
son of Syed Ismail Quadri
Since deceased through legal representative

Syed Ismail Quadri
s/o. late Syed Ahmed Quadri
r/o. Niloor
Afzalpur Taluk .. Petitioner

(By Sri.S.Z.A. Khureshi - Adv.)

- vs -

Syed Shah Hussaini
s/o. late Syed Shah Raju Qadri
since deceased by legal representative

Syed Mohammed Qadri
s/o. late Syed Shaha Hussaini
aged major
r/o. Nildor, Afzalpur Taluk. .. Respondent

(By Sri.Mohd. Shafiuddin - Adv.)

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This C.R.P. filed under Section 115 of CPC against the order dated 23-6-1997 passed in Misc. No.7/93 on the file of the Civil Judge (Jr.Dn.) Afzalpur, rejecting the petition filed under Section 144 of CPC.

This C.R.P. coming on for being spoken to today, the Court made the following :

O R D E R

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O R D E R

This matter coming on for being spoken to, the matter is heard in full and disposed of by this order afresh.

2. The petitioner's father suffered a decree from the competent Civil Court by way of contest and thereafter, by way of compromise wherein the decree has been granted in favour of the respondent's father to recover 1/3rd share from the late judgment debtor. As the judgment debtor (father of the petitioner herein) failed to comply the decree, the decree holder (father of respondent herein) move the Deputy commissioner, Gulbarga for recovery of the said amount. The Deputy Commissioner rejected his request on the ground that he has no jurisdiction to do so. The respondent, thereafter approached the executing Court under Section 144 CPC. Certain contentions are raised by the LR's of the judgment debtor including the question that the petition under Section 144 CPC is not maintainable for determining the mesne profits. Even otherwise, the petition is time barred. The executing Court has rejected the said contention on the ground that there is an observation in the order of the Principal Civil

Judge Court, Gulbarga in Execution Appeal No.2/1982 dated 22-6-1987. While perusal of the discussion made at Para 13 and 14, the learned Civil Judge was of the opinion that the execution cannot be proceeded with in the absence of the fixed quantum of the amount claimed in the execution petition and that can be done only in the separate proceedings as mesne profits will be determined. Based upon this opinion expressed in the execution appeal, the Court has rejected the judgment debtor's contention. In essence, the application made by the decree holder is to determine the mesne profits only. Whether the executing court can determine mesne profits is a matter for consideration for that Court only. However, it is not known how the decree holder can invoke the provisions of Section 144 CPC to get the said relief. If the executing court find that it has jurisdiction to decide the quantum of mesne profits, it can do so and it can determine the mesne profits. Otherwise, a suitable order will be passed by the Court on the question. It is open to the decree holder

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to make necessary application before the executing court to determine the mesne profits if that Court has jurisdiction to do so. Revision is disposed of accordingly.

Sd/-
JUDGE

rs/-

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